109-732

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 975.

THE COUNTY OF SHERMAN, IN THE STATE OF NEBRASKA, PLAINTIFF IN ERROR,

vs.

HENRY W. SIMONDS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED SEPTEMBER 24, 1883.

trust must be clearly alleged in the bill, not only in terms, but all the *facts* must be set forth from which the trust is claimed to result."—(Perry on Trusts, sec. 137. See, also, *Andrew vs. Farnham*, 2 Stockton's Ch., 91; 1 Lead. Cases in Eq., 282.) It is plain, therefore, that the plaintiff cannot, on finding that she was not a beneficiary under the deed of trust and the will, mend her hold by claiming to be a *cestui que trust* by reason of a specific and different understanding attached to the absolute deed. This latter ground, not having been alleged, cannot be proved.

If it were admissible, however, to prove a trust arising from a specific understanding that the plaintiff and Genevieve Carusi were to be beneficiaries under the absolute deed, no such understanding has been found. The supposed proof is made up of declarations of the grantor and grantee, and these declarations are not made to bear upon the transaction in question. The rule is, that where it is attempted to convert a *prima facie* absolute gift into a trust by means of verbal declarations, the expressions must be used contemporaneously with, or in contemplation of, the act of disposition.—(Hill on trustee, [60.] 94; Kilpin vs. Kilpin, 1 M & K., 537; *Somerbye vs. Arden*, 1 Johns. Ch., 240; *Tritt vs Crotzer*, 13 Pa. St., 451)

It must be shown, too, that the grantee, Samuel Carusi, was a party to the understanding *before* the deed was made. —(1 Hillard on Real Prop., 441; *Hoge vs. Hoge*, 1 Watts, 163.) The reasoning of Chief Justice Gibson in the latter case is conclusive to the point that the grantee must have exercised an agency in the arrangement. The plantiff has proved by one of her witnesses, Flood, that Samuel Carusi was surprised by the form of the deed.

As to the trustworthiness of this kind of proof, see *Boyd vs. McLean*, 1 Johns Ch., 586; *Smith vs. Burnham*, 3 Sumner, 438; Faringer vs. Ramsey, 4 Md. Ch., 37; *Blair vs. Bass*, 4 Blackf., 545.)

It is submitted that the decree below was right and ought to be affirmed.

L. G. HINE, *Sol., &c.*

109-735

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INDEX.

	Original.	Print.
Caption	1	1
Amended and supplemental petition	1	1
Exhibits.—Interest coupons	18	21
Exhibits.—Bonds	26	31
Answer	32	38
Reply	34	40
Stipulation waiving jury	35	40
Hearing	36	41
Leave granted to file amended answer and reply	36	41
Answer	36	42
Reply	39	43
Finding of facts	40	44
Motion for judgment by defendant	42	45
Stipulation as to facts	43	46
Motion for judgment by plaintiff	43	46
Motion to amend finding of facts	44	47
Additional finding of facts	45	47
Judgment	46	48
Writ of error	47	48
Citation	48	49
Clerk's certificate	49	50
Assignment of errors	50	50

1, 2 Pleas before the honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, and Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska, sitting in the circuit court of the United States for the eighth judicial circuit and district of Nebraska, at the term of May, 1883.

Be it remembered that on the 16th day of April, 1881, by leave of court first obtained, an amended and supplemental petition was filed in the office of the clerk of said circuit court, which said amended and supplemental petition is in words and figures following, to wit:

Petition.

In the circuit court of the United States for the district of Nebraska.

HENRY W. SIMONDS, PLAINTIFF,
against
THE COUNTY OF SHERMAN, IN THE STATE OF Nebraska, defendant.

The said plaintiff, Henry W. Simonds, for a cause of action herein says that he is a citizen and resident of the State of Vermont, and that the said defendant, The County of Sherman, is a quasi corporation duly organized under the laws of the State of Nebraska, and a citizen of said State, and that the amount in controversy in this action exceeds, exclusive of costs, the sum of five hundred dollars.

3 And for a first cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1878, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 34 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1878; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit A, 34."

And for a second cause of action herein the said plaintiff says that at

Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1879, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 34 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1879; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit B, 34."

And for a third cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1880, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 34 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1880; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit C, 34."

4 And for a fourth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing,

called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1878, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 35 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1878; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit D, 35."

And for a fifth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1879, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 35 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars, and interest from January 1st, 1879; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit E, 35."

And for a sixth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the

first day of January, 1880, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 35 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1880; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit F, 35."

5 And for a seventh cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1878, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 36 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1878; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit G, 36."

And for an eighth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1879, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 36 of said county for the date aforesaid, which bond was

duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1879; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit H, 36."

And for a ninth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1880, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 36 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1880; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit I, 36."

6 And for a tenth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arhand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1878, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 37 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the

legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1878; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit J, 37."

And for an eleventh cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1879, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 37 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1879; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit K, 37."

And for a twelfth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1880, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 37 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said

counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1880; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit L, 37."

7 And for a thirteenth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1878, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 38 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1878; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit M, 38."

And for a fourteenth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay the bearer thereof on the first day of January, 1879, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 38 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of busi-

ness; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1879; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit N, 38."

And for a fifteenth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1880, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 38 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1880; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit O, 38."

8 And for a sixteenth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1878, at the National Park Bank, in the city of New York, the sum of fifty dollars, being the interest due on bond number 50 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County, for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest

from January 1st, 1878; a true copy of which interest coupon, with all indorsements thereon, is hereto attached, marked "Exhibit P, 50."

And for a seventeenth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1879, at the National Park Bank, in the city of New York, the sum of fifty dollars, being the interest due on bond number 50 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County, for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska, entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1879; a true copy of which interest coupon, with all indorsements thereon, is hereto attached, marked "Exhbiit Q, 50."

And for a eighteenth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1880, at the National Park Bank, in the city of New York, the sum of fifty dollars, being the interest due on bond number 50 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County, for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska, entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1880; a true copy of which interest coupon, with all indorsements thereon, is hereto attached, marked "Exhibit R, 50."

9 And for a nineteenth cause of action herein the said plaintiff says

that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1878, at the National Park Bank in the city of New York, the sum of dollars, being the interest due on bond number 51 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1878; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit S, 51."

And for a twentieth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1879, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 51 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1879; a true copy of which interest coupon, with all indorsements thereon, is hereto attached, marked "Exhibit T, 51."

And for a twenty-first cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon,

signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof, on the first day of January, 1880, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 51 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1880; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit U, 51."

10 And for a twenty-second cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1878, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 52 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County, for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska, entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon, that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1878; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit V, 52."

And for a twenty-third cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer

thereof on the first day of January, 1879, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 52 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County, for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska, entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1879; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit W, 52."

And for a twenty-fourth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1880, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 52 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County, for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska, entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon, that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1880; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit X, 52."

11 And for a twenty-fifth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1878, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 53 of said county for the date aforesaid, which

bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1878; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit Y, 53."

And for a twenty-sixth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1879, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 53 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1879; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit Z, 53."

And for a twenty-seventh cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1880, at the National Park Bank in the city of New York the sum of fifty dollars, being the interest due on bond number 53 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act

of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1880; a true copy of which interest coupon with all indorsements thereon is attached, marked "Exhibit Ab, 53."

12 And for a twenty-eighth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1878, at the National Park Bank in the city of New York, the sum of ten dollars, being the interest due on bond number 133 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of ten dollars and interest from January 1st, 1878; a true copy of which interest coupon with all endorsements thereon is hereto attached, marked "Exhibit Ac, 133."

And for a twenty-ninth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1879, at the National Park Bank in the city of New York, the sum of ten dollars, being the interest due on bond number 133 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," ap-

proved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of ten dollars and interest from January 1st, 1879; a true copy of which interest coupon with all endorsements thereon is hereto attached, marked "Exhibit Ad, 133."

And for a thirtieth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baille, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1880, at the National Park Bank in the city of New York, the sum of ten dollars, being the interest due on bond number 133 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of ten dollars and interest from January 1st, 1880; a true copy of which interest coupon with all endorsements thereon is hereto attached, marked "Exhibit Ae, 133."

13 And for a thirty-first cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of five hundred dollars, being the principal due on bond number 38 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said bond; that he purchased the same before maturity for value in the due course of

business; that said bond was not paid when due although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of five hundred dollars and interest from January 1st, 1881; a true copy of which bond with all indorsements thereon is hereto attached, marked "Exhibit A, 38."

And for a thirty-second cause of action herein the plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made a certain instrument in writing signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of five hundred dollars, being the principal due on bond number 50 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said bond; that he purchased the same before maturity for value in the due course of business; that said bond was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of five hundred dollars and interest from January 1st, 1881; a true copy of which bond with all indorsements thereon is hereto attached, marked "Exhibit A, 50."

And for a thirty-third cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, A. D. 1881, at the National Park Bank in the city of New York, the sum of five hundred dollars, being the principal due on bond number 51 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said bond; that he purchased the same before maturity for value in the due course of business; that said bond was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of five hundred dollars and interest from Janu-

ary 1st, 1881; a true copy of which bond with all indorsements thereon is hereto attached, marked "Exhibit A, 51."

14 And for a thirty-fourth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of five hundred dollars, being the principal due on bond number 52 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County, for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska, entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said bond; that he purchased the same before maturity for value in the due course of business; that said bond was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of five hundred dollars and interest from January 1st, 1881; a true copy of which bond, with all indorsements thereon, is hereto attached, marked "Exhibit A, 52."

And for a thirty-fifth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of five hundred dollars, being the principal due on bond number 53 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County, for the purpose of funding the floating indebtedness of said county and in pursuance of an act of the legislature of Nebraska, entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said bond; that he purchased the same before maturity for value in the due course of business; that said bond was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of five hundred dollars and interest from January 1st, 1881; a true copy of which bond, with all indorsements thereon, is hereto attached, marked "Exhibit A, 53."

And for a thirty-sixth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of one hundred dollars, being the principal due on bond number 133 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County, for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska, entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said bond; that he purchased the same before maturity for value in the due course of business; that said bond was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of one hundred dollars and interest from January 1st, 1881; a true copy of which bond, with all indorsements thereon, is hereto attached, marked "Exhibit A, 133."

15 And for a thirty-seventh cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 38 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1881; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit B, 38."

And for a thirty-eighth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the

order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 50 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1881; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit B, 50."

And for a thirty-ninth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 51 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1881; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit B, 51."

16 And for a fortieth cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A.

B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 52 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1881; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit B, 52."

And for a forty-first cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of fifty dollars, being the interest due on bond number 53 of said county for the date aforesaid, which bond was duly signed, issued, and negotiated January first, 1876, by the board of county commissioners of said Sherman County for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of fifty dollars and interest from January 1st, 1881; a true copy of which interest coupon, with all indorsements thereon is hereto attached, marked "Exhibit B, 53."

And for a forty-second cause of action herein the said plaintiff says that at Loup City, Nebraska, on the first day of January, A. D. 1876, the said defendant, by its board of county commissioners, duly authorized by the order of said board, made its certain instrument in writing, called coupon, signed by Jonathan Arthand, Samuel Hancock, and William Baillie, county commissioners of said county, and countersigned by A. B. Tutton, county clerk, whereby the said defendant promised to pay to the bearer thereof on the first day of January, 1881, at the National Park Bank in the city of New York, the sum of ten dollars, being the interest due on bond num-

ber 133 of said county for the date aforesaid, which bond was duly signed, issued and negotiated January first, 1876, by the board of county commissioners of said Sherman County, for the purpose of funding the floating indebtedness of said county, and in pursuance of an act of the legislature of Nebraska entitled "An act to authorize the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18th, 1875. The plaintiff further says that he is the owner, holder, and bearer of said interest coupon; that he purchased the same before maturity for value in the due course of business; that said coupon was not paid when due, although duly presented at the place of payment and payment thereon duly demanded, and that there is now due thereon the sum of ten dollars and interest from January 1st, 1881; a true copy of which interest coupon with all indorsements thereon is hereto attached, marked "Exhibit B, 133."

17 Wherefore the plaintiff prays judgment for forty-two hundred and forty dollars ($4,240), together with interest on thirteen hundred and eighty dollars thereof ($1,380) from the 1st day of January, 1878, and on twenty-eight hundred and sixty dollars ($2,860) thereof from the 1st day of January, 1881, at the rate of ten per centum per annum.

HARWOOD & AMES,
Attorneys for Plaintiff.

STATE OF NEBRASKA,
Lancaster County, ss:

N. S. Harwood, being first duly sworn, says that he is one of the attorneys for the plaintiff in the above and foregoing-entitled cause of action, duly authorized in the premises; that he has heard read the amended petition in said cause of action, and knows the contents thereof, and that the facts therein set forth are true, as affiant believes.

N. S. HARWOOD.

Subscribed and sworn to before me, this 14th day of April, 1881.
[SEAL.] A. W. KINSMAN,
Notary Public.

18 EXHIBIT A 34.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1878, at the National Park Bank, in the city of New York, being interest on funding bond No. 34—2.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT B 34.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1879, at the National Park Bank, in the city of New York, being interest on funding bond No. 34—3.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co. Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT C 34.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1880, at the National Park Bank, in the city of New York, being interest on funding bond No. 34—4.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

19 EXHIBIT D 35.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1878, at the National Park Bank in the city of New York, being interest on funding bond No. 35—2.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT E 35.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January* 1*st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1879, at the National Park Bank in the city of New York, being interest on funding bond No. 35—3.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT F 35.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January* 1*st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1880, at the National Park Bank in the city of New York, being interest on funding bond No. 35—4.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT G 36.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January* 1*st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1878, at the National Park Bank in the city of New York, being interest on funding bond No. 36—2.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

20 EXHIBIT H 36.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1879, at the National Park Bank in the city of New York, being interest on funding bond No. 36—3.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT I 36.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1880, at the National Park Bank in the city of New York, being interest on funding bond No. 36—4.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT J 37.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1878, at the National Park Bank in the city of New York, being interest on funding bond No. 37—2.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT K 37.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1879, at the National Park Bank in the city of New York, being interest on funding bond No. 37—3.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

21 EXHIBIT L 37.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1880, at the National Park Bank in the city of New York, being interest on funding bond No. 37—4.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT M 38.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1878, at the National Park Bank in the city of New York, being interest on funding bond No. 38—2.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT N 38.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1879, at the National Park Bank in the city of New York, being interest on funding bond No. 38—3.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT O 38.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1880, at the National Park Bank in the city of New York, being interest on funding bond No. 38—4.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

22 EXHIBIT P 50.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1878, at the National Park Bank in the city of New York, being interest on funding bond No. 50—2.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT Q 50.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January* 1*st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1879, at the National Park Bank, in the city of New York, being interest on funding bond No. 50—3.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT R 50.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, *January* 1*st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1880, at the National Park Bank, in the city of New York, being interest on funding bond No. 50—4.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co. Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT S 51.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. $50.]

LOUP CITY, NEB., *January* 1*st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1878, at the National Park Bank, in the city of New York, being interest on funding bond No. 51—2.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A B. TUTTON,
Co. Clerk of Sherman Co., Neb.

23 EXHIBIT T 51.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1879, at the National Park Bank in the city of New York, being interest on funding bond No. 51—3.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT U 51.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1880, at the National Park Bank in the city of New York, being interest on funding bond No. 51—4.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT V 52.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1878, at the National Park Bank in the city of New York, being interest on funding bond No. 52—2.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT W 52.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1879, at the National Park Bank in the city of New York, being interest on funding bond No. 52—3.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

24 EXHIBIT X 52.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1880, at the National Park Bank in the city of New York, being interest on funding bond No. 52—4.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT Y 53.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1878, at the National Park Bank in the city of New York, being interest on funding bond No. 53—2.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT Z 53.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January* 1*st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1879, at the National Park Bank in the city of New York, being interest on funding bond No. 53—3.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT A*b* 53.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January* 1*st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1880, at the National Park Bank in the city of New York, being interest on funding bond No. 53—4.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

25 EXHIBIT A*c* 133.

$10.] STATE OF NEBRASKA, SHERMAN COUNTY. [$10.

LOUP CITY, NEB., *January* 1*st*, 1876.

The treasurer of said county will pay to the bearer hereof ten dollars, January first, 1878, at the National Park Bank, in the city of New York, being interest on funding bond No. 133—2.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT *Ad* 133.

$10.] STATE OF NEBRASKA, SHERMAN COUNTY. [$10.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof ten dollars, January first, 1879, at the National Park Bank, in the city of New York, being interest on funding bond No. 133—3.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT *Ae* 133.

$10.] STATE OF NEBRASKA, SHERMAN COUNTY. [$10.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof ten dollars, January first, 1880, at the National Park Bank, in the city of New York, being interest on funding bond No. 133—4.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

26 EXHIBIT A 38.

No. 38.] UNITED STATES OF AMERICA. [$500.

THE STATE OF NEBRASKA, SHERMAN COUNTY.

Funding bond.

Know all men by these presents that the county of Sherman, in the State of Nebraska, for value received, hereby promises to pay to the bearer hereof the sum of five hundred dollars, lawful money of the United States, on the first day of January, A. D. 1881, at the National Park Bank in the city of New York, with interest thereon at the rate of ten per centum per annum, payable annually at the same place on the first day of January of each year, on the presentation and surrender as the same fall due of the annexed interest coupons.

This bond is issued by said county of Sherman, in pursuance to an act of the legislature of the State of Nebraska, entitled "An act to authorize the commissioners of the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18, 1875. And by the said act it is made the duty of the board of commissioners of said county to cause to be annually levied, collected, and paid to the holders of said bonds a special tax upon all the taxable property within said county sufficient to pay the annual interest, and finally to pay the principal thereof, which tax, when levied, is by said act made a lien upon all the taxable property in said county.

In testimony whereof the said county commissioners of Sherman County, Nebraska, have hereunto affixed their official signatures and caused to be hereunto affixed the official seal of said county, at Loup City, Sherman County, Nebraska, this first day of January, A. D. 1876.

JONATHAN ARTHAND,
Chairman Board of Commissioners, Sherman Co., Neb.
SAMUEL HANCOCK,
Com. Sherman Co., Neb.
WILLIAM BAILLIE,
Com. Sherman Co., Neb.

Countersigned this first day of January, A. D. 1876:
[SEAL.] A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT B 38.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1881, at the National Park Bank in the city of New York, being interest on funding bond No. 38.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
[SEAL.] A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

27 EXHIBIT A 50.

No. 50.] UNITED STATES OF AMERICA. [$500.

THE STATE OF NEBRASKA, SHERMAN COUNTY.

Funding bond.

Know all men by these presents that the county of Sherman, in the

State of Nebraska, for value received, hereby promises to pay to the bearer hereof the sum of five hundred dollars, lawful money of the United States, on the first day of January, A. D. 1881, at the National Park Bank in the city of New York, with interest thereon at the rate of ten per centum per annum, payable annually at the same place on the first day of January of each year, on the presentation and surrender as the same fall due of the annexed interest coupons.

This bond is issued by said county of Sherman in pursuance to an act of the legislature of the State of Nebraska, entitled "An act to authorize the commissioners of the counties of Colfax, Platt, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18, 1875. And by the said act it is made the duty of the board of commissioners of said county to cause to be annually levied, collected, and paid to the holders of said bonds a special tax upon all the taxable property within said county sufficient to pay the annual interest, and finally to pay the principal thereof, which tax, when levied, is by said act made a lien upon all the taxable property in said county.

In testimony whereof the said county commissioners of Sherman County, Nebraska, have hereunto affixed their official signatures and caused to be hereunto affixed the official seal of said county, at Loup City, Sherman County, Nebraska, this first day of January, A. D. 1876.

JONATHAN ARTHAND,
Chairman Board of Commissioners, Sherman Co., Neb.
SAMUEL HANCOCK,
Com. Sherman Co., Neb.
WILLIAM BAILLIE,
Com. Sherman Co., Neb.

Countersigned this first day of January, A. D. 1876:
[SEAL.] A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT B 50.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1881, at the National Park Bank in the city of New York, being interest on funding bond No. 50.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

28 EXHIBIT A 51.

No. 51.] UNITED STATES OF AMERICA. [$500.

THE STATE OF NEBRASKA, SHERMAN COUNTY.

Funding bond.

Know all men by these presents that the county of Sherman, in the State of Nebraska, for value received, hereby promises to pay to the bearer hereof the sum of five hundred dollars, lawful money of the United States, on the first day of January, A. D. 1881, at the National Park Bank, in the city of New York, with interest thereon at the rate of ten per centum per annum, payable annually, at the same place on the first day of January of each year, on the presentation and surrender as the same fall due of the annexed interest coupons.

This bond is issued by said county of Sherman in pursuance to an act of the legislature of the State of Nebraska, entitled "An act to authorize the commissioners of the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18, 1875. And by the said act it is made the duty of the board of commissioners of said county to cause to be annually levied, collected, and paid to the holders of said bonds a special tax upon all the taxable property within said county sufficient to pay the annual interest, and finally to pay the principal thereof, which tax, when levied, is by said act made a lien upon all the taxable property in said county.

In testimony whereof the said county commissioners of Sherman County, Nebraska, have hereunto affixed their official signatures and caused to be hereunto affixed the official seal of said county, at Loup City, Sherman County, Nebraska, this first day of January, A. D. 1876.

JONATHAN ARTHAND,
Chairman Board of Commissioners, Sherman Co., Neb.
SAMUEL HANCOCK,
Com. Sherman Co., Neb.
WILLIAM BAILLIE,
Com. Sherman Co., Neb.

Countersigned this first day of January, A. D. 1876:
[SEAL.] A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT B 51.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars,

January first, 1881, at the National Park Bank in the city of New York, being interest on funding bond No. 51.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

29 EXHIBIT A 52.

No. 52.] UNITED STATES OF AMERICA. [$500.

THE STATE OF NEBRASKA, SHERMAN COUNTY.

Funding bond.

Know all men by these presents that the county of Sherman, in the State of Nebraska, for value received, hereby promises to pay to the bearer hereof the sum of five hundred dollars, lawful money of the United States, on the first day of January, A. D. 1881, at the National Park Bank, in the city of New York, with interest thereon at the rate of ten per centum per annum, payable annually, at the same place, on the first day of January of each year, on the presentation and surrender as the same fall due of the annexed interest coupons.

This bond is issued by said county of Sherman in pursuance to an act of the legislature of the State of Nebraska entitled "An act to authorize the commissioners of the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18, 1875. And by the said act it is made the duty of the board of commissioners of said county to cause to be annually levied, collected, and paid to the holders of said bonds a special tax upon all the taxable property within said county sufficient to pay the annual interest, and finally to pay the principal thereof, which tax, when levied, is by said act made a lien upon all the taxable property in said county.

In testimony whereof the said county commissioners of Sherman County, Nebraska, have hereunto affixed their official signatures and caused to be hereunto affixed the official seal of said county, at Loup City, Sherman County, Nebraska, this first day of January, A. D. 1876.

JONATHAN ARTHAND,
Chairman Board of Commissioners Sherman Co., Neb.
SAMUEL HANCOCK,
Com. Sherman Co., Neb.
WILLIAM BAILIE,
Com. Sherman Co., Neb.

Countersigned this first day of January, A. D. 1876:
[SEAL.] A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT B 52.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1881, at the National Park Bank in the city of New York, being interest on funding bond No. 52.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

30 EXHIBIT A 53.

No. 53.] UNITED STATES OF AMERICA. [$500.

THE STATE OF NEBRASKA, SHERMAN COUNTY.

Funding bond.

Know all men by these presents that the county of Sherman, in the State of Nebraska, for value received, hereby promises to pay the bearer hereof the sum of five hundred dollars, lawful money of the United States, on the first day of January, A. D. 1881, at the National Park Bank, in the city of New York, with interest thereon at the rate of ten per centum per annum, payable annually at the same place on the first day of January of each year, on the presentation and surrender as the same fall due of the annexed interest coupons.

This bond is issued by said county of Sherman in pursuance to an act of the legislature of the State of Nebraska entitled "An act to authorize the commissioners of the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18, 1875. And by the said act it is made the duty of the board of commissioners of said county to cause to be annually levied, collected and paid to the holders of said bonds a special tax upon all the taxable property within said county sufficient to pay the annual interest, and finally to pay the principal thereof, which tax, when levied, is by said act made a lien upon all the taxable property in said county.

In testimony whereof the said county commissioners of Sherman County, Nebraska, have hereunto affixed their official signatures, and caused to be

hereunto affixed the official seal of said county, at Loup City, Sherman County, Nebraska, this first day of January, A. D., 1876.

JONATHAN ARTHAND,
Chairman Board of Commissioners Sherman Co., Neb.
SAMUEL HANCOCK,
Com. Sherman Co., Neb.
WILLIAM BAILLIE,
Com. Sherman Co., Neb.

Countersigned this first day of January, A. D. 1876.
[SEAL.] A. B. TUTTON,
Co. Clerk of Sherman Co. Neb.

EXHIBIT B 53.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP, CITY., NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January 1st, 1881, at the National Park Bank, in the city of New York, being interest on funding bond No. 53.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co. Neb.
WILLIAM BAILLIE,
Com. of Sherman Co. Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co. Neb.

31 EXHIBIT A 133.

No. 133.] UNITED STATES OF AMERICA. [$100.

THE STATE OF NEBRASKA, SHERMAN COUNTY.

Funding bond.

Know all men by these presents that the county of Sherman, in the State of Nebraska, for value received, hereby promises to pay to the bearer hereof the sum of one hundred dollars, lawful money of the United States, on the first day of January, A. D. 1881, at the National Park Bank, in the city of New York, with interest thereon at the rate of ten per centum per annum, payable annually at the same place on the first day of January of each year, on the presentation and surrender as the same fall due of the annexed interest coupons.

This bond issued by said county of Sherman in pursuance to an act of the legislature of the State of Nebraska entitled "An Act to authorize the commissioners of the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18, 1875.

And by the said act it is made the duty of the board of commissioners of said county to cause to be annually levied, collected, and paid to the holders of said bonds a special tax upon all the taxable property within said county sufficient to pay the annual interest, and finally to pay the principal thereof, which tax, when levied, is by said act made a lien upon all the taxable property in said county.

In testimony whereof the said county commissioners of Sherman County, Nebraska, have hereunto affixed their official signatures and caused to be hereunto affixed the official seal of said county, at Loup City, Sherman County, Nebraska, this first day of January, A. D. 1876.

JONATHAN ARTHAND,
Chairman Board of Commissioners Sherman Co., Neb.
SAMUEL HANCOCK,
Com. Sherman Co., Neb.
WILLIAM BAILLIE,
Com. Sherman Co., Neb.

Countersigned this first day of January, A. D. 1876.
[SEAL.] A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

EXHIBIT B 133.

$10.] STATE OF NEBRASKA, SHERMAN COUNTY. [$10.

LOUP CITY, NEB., *January 1st*, 1876.

The treasurer of said county will pay to the bearer hereof ten dollars, January first, 1881, at the National Park Bank in the city of New York, being interest on funding bond No. 133.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.
SAMUEL HANCOCK,
Com. of Sherman Co., Neb.
WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—
A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

32 Upon the back of said amended and supplemental petition appear endorsements in words and figures following, to wit: No. 69, F. Henry W. Simonds against The County of Sherman. Filed April 16th, 1881. Watson B. Smith, clerk, by E. D. Frank, deputy. Amended and supplemental petition.

I hereby agree to be held as security for costs.

A. C. PLATT.
SAMUEL G. OWEN.

Above security for costs approved.

HARWOOD AND AMES,
Att'ys for Plaintiff.

Thereupon, afterwards, to wit, on the 2nd day of May, 1881, an answer was filed in said case, which said answer is in words and figures following, to wit:

Answer.

In the circuit court of the United States for the district and circuit of Nebraska.

HENRY W. SIMONDS
vs.
THE COUNTY OF SHERMAN.

Now comes the defendant and admits that it is a corporation duly organized, but denies all other allegations in each of the causes of action set forth in the petition filed herein, and states that the same are untrue, except that the persons who signed the bonds set forth in the petition were at the time county commissioners of said county.

For a second cause of defense the defendant states that said bonds were issued or pretended to be issued, to the amount of $45,000, in Sherman County; that there were issued of said bonds $45,000, and that on the first day of January, 1875, said Sherman County was not indebted in such sum of $45,000, but that all the lawful debts against said county at that time would not exceed the sum of $16,000.

Defendant therefore submits, under advice of counsel, that said
33 commissioners had no authority or power to execute and deliver said bonds to the amount of $45,000, and that their act in so signing them was void, and made no binding obligation upon the county.

Defendant further alleges that said bonds with coupons attached, upon which this suit and its different causes of action are predicated, were exchanged, or pretended to be exchanged, for a less sum than 85 cents on the dollar, and were therefore negotiated in violation of law. And defendant submits, under advice of counsel, that said bonds and coupons attached were so negotiated, and that they are void and of no binding and legal effect against said county.

And defendant denies that said bonds were ever negotiated by said county, or were ever delivered, but says that the same were fraudulently put into circulation by the clerk of said county without any authority.

Defendant further says that there was no pretense that these bonds and coupons were delivered on the 4th day of January, 1876, nor were these bonds and coupons negotiated, or pretended to be negotiated, or delivered until long after January, 1876; yet the said bonds when delivered and pretended to have been sold bore interest from January 1st, 1876, and were sold for less than 75 cents on the dollar.

Wherefore the defendant prays judgment for costs.

T. M. MARQUETT,
Att'y for Def't.

UNITED STATES OF AMERICA, *ss:*

T. M. Marquett, being duly sworn, says that the defendant above named, The County of Sherman, in the State of Nebraska, is a municipal corpora-

tion, and that he is the attorney of record of the said defendant in the above-entitled cause, and that the facts set forth in the foregoing answer are true, as he believes.

T. M. MARQUETT.

34 Sworn to before me and subscribed in my presence this 2nd day of May, 1881.

WATSON B. SMITH, *Clerk.*

Upon the back of said answer appear endorsements in words and figures following to wit: No. 69, F. In the district court of the U. S. for the circuit and district of Nebraska. Henry W. Simonds vs. The County of Sherman. Answer. Filed May 2nd, 1881. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 18th day of October, 1881, a reply was filed in said case, which said reply is in words and figures following, to wit:

Reply.

In the circuit court of the United States for the district of Nebraska.

HENRY W. SIMONDS, PLAINTIFF,
vs.
THE COUNTY OF SHERMAN, DEFENDANT.

Now comes the said plaintiff, and for a reply to the answer of said defendant heretofore filed herein says that he denies each and every allegation of new matter in said answer contained.

HARWOOD AND AMES,
Attorneys for Plaintiff.

STATE OF NEBRASKA,
County of Lancaster, ss:

N. S. Harwood, being first duly sworn, says he is one of the attorneys of record of said plaintiff; that he has read the above reply, knows the contents thereof, and that the facts therein set forth are, as affiant believes, true.

N. S. HARWOOD.

Subscribed in my presence and sworn to before me this 18th day of October, 1881.

A. D. BURR, *Clk D. C.*

35 Upon the back of said reply appear endorsements in words and figures following, to wit: No. 69, F. Henry W. Simonds vs. The County of Sherman. Reply.

Leave given to withdraw demurrer and file this reply, Oct. 18th, 1881.

T. M. MARQUETT,
Att'y for Defendant.

Filed Oct. 18, 1881. Watson B. Smith, clerk. Howard and Ames, attorneys for plaintiff.

Thereupon, afterwards, to wit, on the 25th day of February, 1882, a stipulation waiving jury was filed in said case, which said stipulation waiving jury is in words and figures following, to wit:

Stipulation.

In the circuit court of the United States for the district of Nebraska.

HENRY W. SIMONDS, PLAINTIFF,
vs.
THE COUNTY OF SHERMAN, IN NEBRASKA, defendant.

It is hereby stipulated and agreed that a jury be waived in this case and the cause tried to the court without the intervention of a jury, with like effect as if tried by a jury.

HARWOOD AND AMES,
Att'ys for Plaintiff.
T. M. MARQUETT,
Att'y for Defendant.

Upon the back of said stipulation appear endorsements in words and figures following, to wit: 69, doc. F. Henry W. Simonds vs. The County of Sherman. Stipulation waiving jury. Filed Feb. 25, 1882. Elmer D. Frank, clerk. Harwood and Ames, att'ys for plaintiff. T. M. Marquett, att'y for defendant.

Thereupon, afterwards, at the January term of said court, on the 25th day of February, 1882, the following proceedings were had, as appears of record on folio 626, Journal G, of said court, to wit:

36 HENRY W. SIMONDS *against* COUNTY OF SHERMAN. } No. 69, F.

This cause coming on for hearing on the pleadings and evidence, was submitted to the court without the intervention of a jury—trial by jury being waived by stipulation of parties. Whereupon, after hearing the arguments of counsel, the court takes said cause under consideration.

Thereupon, afterwards, at the January term of said court, on the 4th day of April, 1882, the following proceedings were had, as appears of record on folio 646, journal G of said court, to wit:

HENRY W. SIMONDS *vs.* COUNTY OF SHERMAN. } No. 69, F.

This day came the parties, by their attorneys, whereupon defendant is given leave to file amended answer in 4 days, plaintiff to reply in 18 days, when this cause is to be submitted on briefs.

Thereupon, afterwards, to wit, on the 11th day of April, 1882, an answer was filed in said cause, which said answer is in words and figures following, to wit:

Answer.

In the district court of the United States for the circuit and district of Nebraska.

HENRY W. SIMONDS
v.
THE COUNTY OF SHERMAN.

Now comes the defendant and admits that it is a corporation duly organized under the laws of the State of Nebraska, but denies all other allegations contained in each of the causes of action set forth in the petition filed herein, and states that the same are untrue, except that the persons who signed the bonds set out in the petition were at the time
37 county commissioners of said county.

For a second cause of defense the defendant states that said bonds were issued, or pretended to be issued, to the amount of $45,000, on Sherman County; that there were issued of said bonds $45,000; that on the 1st day of January, 1875, said Sherman County was not indebted in such sum of $45,000, but that all the lawful debts against said county at that time would not exceed the sum of $16,000.

Defendant therefore submits, under advice of counsel, that said commissioners had no authority or power to execute and deliver said bonds to the amount of $45,000, and that their act in so signing them was void, and made no binding obligation upon the county.

Defendant further alleges that said bonds, with coupons attached, upon which this suit and its different causes of action are predicated, were exchanged, or pretended to be exchanged, for a less sum than 85 cents on the dollar, and were therefore negotiated in violation of law.

And defendant submits, under advice of counsel, that said bond, and coupons attached were so negotiated, and that they are void and of no binding and legal effect against said county.

And defendant denies that said bonds were ever negotiated by said county or were ever delivered, but says that the same were fraudulently put into circulation by the clerk of said county without any authority.

Defendant further says that there was no pretense made that these bonds and coupons were delivered on the 4th day of January, 1876, nor were these bonds and coupons negotiated, or pretended to be negotiated, or delivered until long after January, 1876; yet the said bonds when delivered and pretended to have been sold bore interest from January
38 1st, 1876 and were sold for less than 85 cents on the dollar.

Defendant for further answer says that there never was any such meeting on the 16th of November, 1875, by the county commissioners of said county as is set forth in the record, but that on October 30th, 1875, the said commissioners adjourned sine die; yet for the fraudulent purpose of issuing said bonds, or pretending to have the same issued, the clerk of said county fraudulently altered the said proceedings of the said board of county commissioners had at the meeting in October, 1875, as aforesaid, by add-

ing the words, "Nov. 16th;" that afterwards the said clerk, conspiring to defraud said county, and to issue the said bonds, did send for and have brought to a place other than the place where the county commissioners met, two of the said commissioners, and that said two county commissioners, without any notice of the third commissioner, in pursuance of a fraudulent combination to defraud the said county, did pretend, on the said 16th day of November, 1875, to hold a meeting and pass an order issuing the said bonds under a special law as set up in said bonds; and that the only authority for the issuance of said bonds and the delivery of the same was the said authority so fraudulently obtained.

Defendant submits, under advice of counsel, that said meeting, or pretended meeting, of said county commissioners, held on November 16th, 1875, and the record which shows it, are fraudulent, and entail no power on said commissioners to issue the said bonds, and that the same are null and void.

UNITED STATES OF AMERICA,
State of Nebraska, Lancaster County, ss:

T. M. Marquett, being duly sworn, says that the defendant above-named, The County of Sherman, in the State of Nebraska, is a mu-
39 nicipal corporation; that he is the attorney of record of said defendant county in the above-entitled cause, and that the facts set forth in the freogoing answer are true, as he verily believes.

T. M. MARQUETT.

Sworn to before me and subscribed in my presence, by T. M. Marquett, this 8th day of April, 1882.

[SEAL.] N. C. ABBOTT, *Notary Public.*

Upon the back of said answer appear endorsements in words and figures following, to wit, No. 69, F. In district court of U. S. for district of Nebr. Henry W. Simonds v. County of Sherman. Answer. Filed April 11, 1882. Elmer D. Frank, clerk. T. M. Marquett, attorney for def't.

Thereupon, afterwards, to wit, on the 2nd day of May, 1882, a reply was filed in said case, which said reply is in words and figures following, to wit:

Reply.

In the circuit court of the United States for the district of Nebraska.

HENRY W. SIMONDS, PLAINTIFF,
vs.
THE COUNTY OF SHERMAN, DEFENDANT.

Now comes the said plaintiff, and for a reply to the answer of said defendant heretofore filed herein says that he denies each and every allegation of new matter in said answer contained.

HARWOOD AND AMES,
Att'ys for Plaintiff.

STATE OF NEBRASKA,
County of Lancaster, ss:

N. S. Harwood, being first duly sworn, says he is one of the attorneys of record of said plaintiff; that he has read the above reply, knows the contents thereof, and that the facts therein set forth are, as affiant believes, true.

N. S. HARWOOD.

40 Subscribed in my presence and sworn to before me this 18th day of Oct., 1881.

A. D. BURR, *Clk D. C.*

Upon the back of said reply appear endorsements in words and figures following, to wit: No. 69, F. Henry W. Simonds vs. The County of Sherman. Reply. Filed May 2, 1882. Elmer D. Frank, clerk. Harwood & Ames, att'ys for plaintiff.

Thereupon, afterwards, to wit, on the 15th day of September, 1882, finding of facts by the court was filed in said case, which said finding of facts is in words and figures following, to wit:

Finding of facts.

In the circuit court of the United States, district of Nebraska.

HENRY W. SIMONDS
vs.
THE COUNTY OF SHERMAN.

Suit on coupons detached from bonds issued to bond the indebtedness of defendant.

Trial by jury waived in writing.

FINDING OF FACTS.

It is found from the pleadings and the testimony and agreed statement of facts offered in support of the said pleadings as follows:

First. That on the first day of January, 1876, Jonathan Arthand, Samuel Hancock, and William Baillie were the county commissioners of Sherman County, and that A. B. Tutton was the county clerk of the said county defendant.

Second. On the first day of January, 1876, the said commissioners executed the bonds sued on and the coupons detached from the bonds, all described in plaintiff's petition.

Third. That the bonds were issued by the commissioners afore-
41 said and finally passed into the hands of the plaintiff in this suit, who was a bona fide purchaser for value, and without notice of defects other than such as appear on the face of the bonds, and that the plaintiff was at the commencement of this suit, and still is, the holder and owner of the bonds and coupons in suit.

Fourth. That said bonds were issued pursuant to an act of the legisla-

ture of the State of Nebraska of date 18' February, 1875, as recited in the said bonds.

Fifth. That on the first day of January, 1875, the indebtedness of said county authorized to be bonded under the said act did not exceed fifteen thousand dollars.

Sixth. The amount of bonds issued and put on the market under the said funding act was near forty-four thousand dollars; but the said bonds, or a portion of them, were exchanged at eighty-five cents on the dollar for the prior obligations of the county.

Seventh. The county commissioners of the said county met in lawful session on the 30th October, 1875, and then duly passed an order submitting to a vote of the people of said county, a proposition to fund the floating indebtedness of the county, which proposition was to be voted upon at the special election on the 29th November following. And after transacting the proper and ordinary business at said meeting the board adjourned sine die.

That after the said adjournment, and without any sort of authority, and for a wrongful and fraudulent purpose, some person or persons surreptitiously added to the record of the proceedings of said board the words "to November 16," thus making it appear that the board had adjourned to that day, instead of the sine die adjournment which was in reality had.

And in furtherance of the said fraudulent design two of the commissioners met without the knowledge of the other, on the day last named, and without any sort of lawful authority, and then rescinded the action
42 theretofore had in submitting the said proposition to a vote of the people.

Eighth. That the bonds in controversy were directed to be issued at the illegal meeting of the said board so held on the said 16th day of November, 1875, and were afterwards issued pursuant to such order, and a further order made at an adjourned meeting of said board on the 5' January, 1876; but whether the meeting last named was a lawful one does not appear. The record simply shows the session to have been an adjourned one, but from what time the adjournment was had does not appear.

Ninth. And that the bonds and coupons sued on were executed in Nebraska, but were made payable in the State of New York.

ELMER S. DUNDY, *Judge.*

Upon the back of said finding of facts appear endorsements in words and figures following, to wit: No. 69, F. U. S. circuit court, district of Nebraska. Henry W. Simonds vs. Sherman County. Finding of facts. Filed Sept. 15, 1882. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 13th day of November, 1882, a motion for judgment, &c., was filed in said case, which said motion for judgment is in words and figures following, to wit:

Motion for judgment.

In the circuit court of the United States in and for the State of Nebraska.

HENRY W. SIMONDS
vs.
THE COUNTY OF SHERMAN.

Now comes the defendant and moves the court for a judgment in its favor on the finding of facts and the pleadings in this cause.

T. M. MARQUETT,
Att'y for Def't.

Upon the back of said motion for judgment, &c., appear endorsements in words and figures following, to wit: No. 69, F. Henry W.
43 Simonds vs. The County of Sherman. Motion for judgment on the finding of facts and the pleadings. Filed Nov. 13, 1882. Elmer D. Frank, clerk. T. M. Marquett, att'y for plaintiff.

Thereupon, afterwards, to wit, on the 17th day of November, 1882, a stipulation was filed in said case, which said stipulation is in words and figures following, to wit:

Stipulation.

In the circuit court of United States.

HENRY W. SIMONDS
vs.
SHERMAN COUNTY.

Now come the parties to this suit and, for the purposes of this suit, they agree that the commissioners' warrant record of Sherman County shows the allowance of $15,000 dollars in claims from the organization of the county to the first day of Jan., 1875, for which warrants or orders were drawn on the treasurer, and no more.

Plaintiff reserves the right to object when the facts here stipulated are offered in evidence for irrelevancy, incompetency, and immeteriality. This stipulation takes the place of offering the original record, and is made to save the expense and trouble of having said original record at the trial.

Dated Feb. 8th, 1882.

HARWOOD AND AMES,
Plaintiff's Att'ys.
T. M. MARQUETT.

Upon the back of said stipulation appear endorsements in words and figures following, to wit: 69 F. Simonds vs. Sherman Co. Stipulation. Filed Nov. 17, 1882. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 17th day of November, 1882, motion for judgment for plaintiff was filed in said case, which said motion is in words and figures following, to wit:

In the circuit court of the United States, district of Nebraska.

44 *Motion for judgment.*

HENRY W. SIMONDS, PLAINTIFF,
vs.
THE COUNTY OF SHERMAN, NEB.

Now comes the said plaintiff and moves for judgment for the plaintiff on the special findings made by the court.

HARWOOD & AMES,
Att'ys for Plaintiff.

Upon the back of said motion for judgment for plaintiff appear endorsements in words and figures following, to wit: 69, F. Henry W. Simonds vs. The County of Sherman. Motion for judgment for plaintiff. Filed Nov. 17, 1882. Elmer D. Frank, clerk. Harwood & Ames, att'ys.

Thereupon, afterwards, to wit, on the 17th day of November, 1882, a paper was filed endorsed "Amend' findings of facts requested and motion for ," which said paper is in words and figures following, to wit:

Motion.

SIMONDS
vs.
THE COUNTY OF SHERMAN.

The plaintiff requests the court to amend the findings of facts in the following particulars, to wit: After the word "an," in the 7th line of 8th finding, insert "regular," and strike out "adjourned" in said line; also strike out all of said 8th finding after "1876" in the 8th line of the said finding.

Second. After the last word of the 5th finding insert "exclusive of interest," as appeared by the commissioners' warrant record, but by a finding made by the commissioners in regular session, on the 5th day of January, said indebtedness was as follows, to wit:

Warrants issued prior to Jan. 1st, 1875	$26,879 95
Interest thereon	$ 5,000 00
" " on bonds due	$ 5,000 00
Total	$36,879 00

HARWOOD & AMES,
Att'ys for Plaintiff.

45 Upon the back of said paper appear endorsements in words and figures following, to wit: No. 69, F. Simonds vs. Sherman Co. Amend' findings of fact requested and motion for. Filed Nov. 17, 1882. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 15th day of January, 1883, additional finding of facts was filed by the court in said case, which said additional finding of facts are in the words and figures following, to wit:

Additional finding of facts made at the January, 1883, term of court, which is made on motion and at request of the plaintiff.

On further and careful examination of the proof on file I find that the parties stipulated in writing that "the commissioners' record of Sherman County shows the allowance of $15,000 dollars in claims from the organization of the county to the first day of January, 1875, for which warrants or orders were drawn on the treasurer and no more," and that such stipulation ought to stand.

This is intended to take the place of finding No. 5.

It is further found that the county commissioners at one of their meetings estimated the amount of the county indebtedness which might be funded at the sum of $36,874.95, for which it would be necessary to issue bonds to the amount of $43,400, and that bonds were issued pursuant to such estimate, but is not shown what the actual indebtedness was at the time the bonds were issued.

ELMER S. DUNDY, *Judge.*

Upon the back of said additional findings of fact appear endorsements in words and figures following, to wit: No. 69, F. Additional findings of facts. Filed Jan. 15, 1883. Elmer D. Frank, clerk.

Thereupon, afterwards, at the May term of said court, on the 25th day of May, 1883, the following proceedings were had, as appears of
46 record on folio 641, journal H, of said court, to wit:

Judgment.

HENRY W. SIMONDS *vs.* SHERMAN COUNTY. } No. 69, F.

This cause having been tried to the court without the intervention of a jury, trial by jury having been waived by stipulation of the parties, said plaintiff appearing by Harwood & Ames, his attorneys, and said defendant appearing by T. M. Marquett and Hamer & Conner and Groff & Montgomery, its attorneys, and the court, after hearing the evidence adduced and the argument of counsel, and being fully advised in the premises, find, on the issue joined, in favor of the plaintiff, and assess his damages at the sum of $5,671.60.

It is thereupon considered, ordered, and adjudged by the court that said plaintiff, Henry W. Simonds, recover of and from said defendant, the County of Sherman, in the State of Nebraska, the said sum of five thousand six hundred and seventy-one & $\frac{60}{100}$ ($5,671.60) dollars, together with interest at ten per centum per annum until paid, and $ costs herein expended.

Thereupon, afterwards, to wit, on the 27th day of July, 1883, a writ of error was allowed in said case and a citation issued thereon, of which said writ of error and citation the following are the originals:

47 UNITED STATES OF AMERICA,
District of Nebraska, ss:

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Nebraska, greeting:

Because in the record and proceedings as also in the rendition of the

judgment of a plea which is in the said circuit court before you, between Henry W. Simonds, plaintiff, and the County of Sherman, Nebraska, defendant, a manifest error hath happened, to the great damage of the said The County of Sherman, Nebraska, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States shall be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, at Omaha, in said district, this 27' July, 1883.

[SEAL.] ELMER D. FRANK, *Clerk.*

Allowed by—

ELMER S. DUNDY, *Judge.*

(Indorsed:) No. 69, F. United States circuit court, district of Nebraska. The County of Sherman, plaintiff in error, vs. Henry W. Simonds, defendant in error. Writ of error. Filed Jul' 30, 1883. Elmer D. Frank, clerk.

48 UNITED STATES OF AMERICA,
District of Nebraska, ss:

To Henry W. Simonds, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein The County of Sherman, Nebraska, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 27th day of July, 1883.

[SEAL.] ELMER S. DUNDY, *Judge.*

I acknowledge service of above citation this 31st day of July, 1883.

HENRY W. SIMONDS,
By HARWOOD & AMES,
His Attorneys.

(Indorsed:) No. 69, F. United States circuit court, district of Nebraska. The County of Sherman, Nebraska, plaintiff in error, vs. Henry W. Simonds, def'd't in error. Citation. Filed 187 .
, clerk. Filed Aug. 7, 1883. Elmer D. Frank, clerk.

49 UNITED STATES OF AMERICA,
District of Nebraska, ss:

By virtue of the foregoing writ of error, and in obedience thereto, I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios, from one to 49, contain true and faithful transcripts of all pleadings and proceedings of record and on file in my office as said clerk, subsequent to and including the date of the filing of the amended and supplemental petition in the case of Henry W. Simonds vs. The County of Sherman, Neb., and that a copy of the writ of error and citation has been lodged and remains in my said office.

Witness my hand and the seal of said court at Omaha this 13th day of August, A. D. 1883.

[SEAL.] ELMER D. FRANK, *Clerk.*

50 *Assignment of errors.*

In the Supreme Court of the United States.

THE COUNTY OF SHERMAN, PLAINTIFF IN error,
vs.
HENRY W. SIMONDS, DEFENDANT IN ERROR.

Comes now The County of Sherman, Nebraska, plaintiff in error, in the above-entitled action, and represents to this honorable court that in an action heretofore pending and determined in the circuit court of the United States for the district of Nebraska, wherein Henry W. Simonds was plaintiff and The County of Sherman, Nebraska, was defendant, manifest errors happened and were done, to the great damage of this plaintiff in error, of which errors are assigned as follows:

1. The facts specially found by the court were insufficient to support the judgment rendered.

2. That the court rendered a judgment in favor of the said defendant in error for the amount claimed by him in his petition, and for costs; whereas the court should have rendered judgment in favor of said plaintiff in error, dismissing the action of the said defendant in error, at his costs.

Wherefore the plaintiff in error prays this honorable court to correct said errors, and reverse the judgment rendered as aforesaid by the said circuit court, and for costs.

T. M. MARQUETT, &
GROFF & MONTGOMERY,
Attorneys for Plaintiff in Error.

(Indorsement on cover:) No. 975. The County of Sherman, in the State of Nebraska, plaintiff in error, vs. Henry W. Simonds. Nebraska C. C. U. S. Filed 24th September, 1883.

104-735

OFFICE SUPREME COURT U. S.
FILED
NOV 5 1893
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States

No. 975.

THE COUNTY OF SHERMAN, IN THE STATE OF NEBRASKA, Plaintiff in Error,

vs.

HENRY W. SIMONDS.

BRIEF FOR THE PLAINTIFF IN ERROR.

TURNER M. MARQUETT,
LEWIS A. GROFF,
C. S. MONTGOMERY,
HAMER & CONNER,
Counsel for Plaintiff in Error.

SAMUEL REES, Printer and Blank Book Maker, Omaha, Neb.

(Indorsed:) No. 69, F. United States circuit court, district of Nebraska. The County of Sherman, Nebraska, plaintiff in error, vs. Henry W. Simonds, def'd't in error. Citation. Filed 187 .
, clerk. Filed Aug. 7, 1883. Elmer D. Frank, clerk.

49 UNITED STATES OF AMERICA,
District of Nebraska, ss:

By virtue of the foregoing writ of error, and in obedience thereto, I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios, from one to 49, contain true and faithful transcripts of all pleadings and proceedings of record and on file in my office as said clerk, subsequent to and including the date of the filing of the amended and supplemental petition in the case of Henry W. Simonds vs. The County of Sherman, Neb., and that a copy of the writ of error and citation has been lodged and remains in my said office.

Witness my hand and the seal of said court at Omaha this 13th day of August, A. D. 1883.

[SEAL.] ELMER D. FRANK, *Clerk.*

50 *Assignment of errors.*

In the Supreme Court of the United States.

THE COUNTY OF SHERMAN, PLAINTIFF IN error,
vs.
HENRY W. SIMONDS, DEFENDANT IN ERROR.

Comes now The County of Sherman, Nebraska, plaintiff in error, in the above-entitled action, and represents to this honorable court that in an action heretofore pending and determined in the circuit court of the United States for the district of Nebraska, wherein Henry W. Simonds was plaintiff and The County of Sherman, Nebraska, was defendant, manifest errors happened and were done, to the great damage of this plaintiff in error, of which errors are assigned as follows:

1. The facts specially found by the court were insufficient to support the judgment rendered.

2. That the court rendered a judgment in favor of the said defendant in error for the amount claimed by him in his petition, and for costs; whereas the court should have rendered judgment in favor of said plaintiff in error, dismissing the action of the said defendant in error, at his costs.

Wherefore the plaintiff in error prays this honorable court to correct said errors, and reverse the judgment rendered as aforesaid by the said circuit court, and for costs.

T. M. MARQUETT, &
GROFF & MONTGOMERY,
Attorneys for Plaintiff in Error.

(Indorsement on cover:) No. 975. The County of Sherman, in the State of Nebraska, plaintiff in error, vs. Henry W. Simonds. Nebraska C. C. U. S. Filed 24th September, 1883.

104-735

SUPREME COURT U. S.
FILED
NOV 5 1833
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States

No. 975.

THE COUNTY OF SHERMAN, IN THE STATE OF NEBRASKA, Plaintiff in Error,

vs.

HENRY W. SIMONDS.

BRIEF FOR THE PLAINTIFF IN ERROR.

TURNER M. MARQUETT,
LEWIS A. GROFF,
C. S. MONTGOMERY,
HAMER & CONNER,
Counsel for Plaintiff in Error.

SAMUEL REES, Printer and Blank Book Maker, Omaha, Neb.

In the Supreme Court of the United States.

No. 975.

THE COUNTY OF SHERMAN, IN THE STATE OF NEBRASKA, Plaintiff in Error.

vs.

HENRY W. SIMONDS.

BRIEF FOR THE PLAINTIFF IN ERROR.

This is a writ of error to the Circuit Court of the United States for the District of Nebraska.

It was an action brought on a number of funding bonds and coupons issued by the commissioners of Sherman county, Nebraska, under a special act of the Legislature of the State of Nebraska, entitled, "An act to authorize the commissioners of the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants, and orders of said counties," approved February 18th, 1875. The following sections of said act are deemed material to a decision of this case.

"SECTION 1. That the board of county commissioners of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman counties, are hereby requested to cause to be prepared in

proper manner, and issued in due form and style, coupon bonds as hereinafter set forth.

"SEC. 2. Such bonds shall be issued for the payment by the said counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, to the holders thereof of the sum specified in each bond respectively; said bonds to run not less than five years nor more than ten years from the date thereof, and shall express that they are issued in pursuance of this act. They shall be of such denominations as the said board of commissioners shall deem proper, but none of them shall be of a less denomination than one hundred dollars, they shall bear interest at the rate of ten per cent. per annum, payable annually on the first day of January of each year. The bonds shall be signed by each member of the said board of commissioners, sealed with the county seal and countersigned by the clerk of said county, said seal shall be affixed to such bonds when delivered, and not before, the coupons shall be attached to said bonds for the payment of said installments of interest above provided for, and said coupons shall be signed in like manner with the bonds, and they shall be receivable in payment of county taxes. The said bonds shall be made payable at such bank or other place as said board of commissioners may deem best to select and designate. The said bonds may be sold and negotiated for money, singly, in parcels, or as a whole, as the said commissioners shall deem best for the interest of the people of said counties, and the proceeds arising therefrom shall be held and used for the purpose, and no other, of paying off and redeeming all warrants

or orders and other evidences of indebtedness drawn upon the treasurer of said counties which are now outstanding, or which may be so outstanding prior to the first day of January, 1875: *Provided*, That no more of the bonds authorized to be issued by virtue of this act shall be issued than is necessary to pay off and redeem such warrants so outstanding: *And provided further*, That the said commissioners shall not issue of said bonds to exceed in value the amount of said indebtedness up to January 1st, 1875, nor shall said bonds be negotiated at a less price than eighty-five cents on the dollar.

"SEC. 3. It shall be the duty of the board of commissioners of said counties to cause to be annually levied, collected and paid to the holder or holders of said bonds, a special tax upon all taxable property within said counties sufficient to pay the annual interest, and finally to pay the principal thereof; which tax when levied, shall be a lien upon all the taxable property in said counties, and shall be collected in the same manner as the ordinary tax of said counties."

Laws of Nebraska (1875) pp. 265-266.

The following are copies of one each of said bonds and coupons.

No. 51.] UNITED STATES OF AMERICA. [$500.

THE STATE OF NEBRASKA, SHERMAN COUNTY.

Funding Bond.

Know all men by these presents that the county of Sherman, in the State of Nebraska, for value received, hereby promises to pay to the bearer hereof the sum of five hundred

dollars, lawful money of the United States, on the first day of January, A. D. 1881, at the National Park Bank, in the city of New York, with interest thereon at the rate of ten per centum per annum, payable annually, at the same place on the first day of January of each year, on the presentation and surrender as the same fall due of the annexed interest coupons.

This bond is issued by said county of Sherman in pursuance to an act of the legislature of the State of Nebraska, entitled "An act to authorize the commissioners of the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman, Nebraska, to issue bonds for the purpose of funding the warrants and orders of said counties," approved February 18, 1875. And by the said act it is made the duty of the board of commissioners of said county to cause to be annually levied, collected, and paid to the holders of said bonds a special tax upon all the taxable property within said county sufficient to pay the annual interest, and finally to pay the principal thereof, which tax, when levied, is by said act made a lien upon all the taxable property in said county.

In testimony whereof the said county commissioners of Sherman county, Nebraska, have hereunto affixed their official signatures and caused to be hereunto affixed the official seal of said county, at Loup City, Sherman county, Nebraska, this first day of January, A. D. 1876.

JONATHAN ARTHAND,
Chairman Board of Commissioners, Sherman Co., Neb.

SAMUEL HANCOCK,
Com. Sherman Co., Neb.

WILLIAM BAILLIE,
Com. Sherman Co., Neb.

Countersigned this first day of January, A. D. 1876:

[SEAL.] A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

$50.] STATE OF NEBRASKA, SHERMAN COUNTY. [$50.

LOUP CITY, NEB., January 1st, 1876.

The treasurer of said county will pay to the bearer hereof fifty dollars, January first, 1881, at the National Park Bank in the city of New York, being interest on funding bond No. 51.

JONATHAN ARTHAND,
Chairman of Com. of Sherman Co., Neb.

SAMUEL HANCOCK,
Com. of Sherman Co., Neb.

WILLIAM BAILLIE,
Com. of Sherman Co., Neb.

Countersigned by—

A. B. TUTTON,
Co. Clerk of Sherman Co., Neb.

(See printed record p. p. 31 and 32.)

Trial by jury was waived and the cause was tried to the court, and Sept. 15th, 1882, the court found the facts as follows:

Finding of Facts.

In the circuit court of the United States, district of Nebraska.

HENRY W. SIMONDS
vs.
THE COUNTY OF SHERMAN.

Suit on coupons detached from bonds issued to bond the indebtedness of defendant.

Trial by jury waived in writing.

FINDING OF FACTS.

It is found from the pleadings and the testimony and agreed statement of facts offered in support of the said pleadings as follows:

First. That on the first day of January, 1876, Jonathan Arthand, Samuel Hancock, and William Baillie were the county commissioners of Sherman county, and that A. B. Tutton was the county clerk of the said county defendant.

Second. On the first day of January, 1876, the said commissioners executed the bonds sued on and the coupons detached from the bonds, all described in plaintiff's petition.

Third. That the bonds were issued by the commissioners aforesaid and finally passed into the hands of the plaintiff in this suit, who was a bona fide purchaser for value, and without notice of defects other than such as appear on the face of the bonds, and that the plaintiff was at the commencement of this suit, and still is, the holder and owner of the bonds and coupons in suit.

Fourth. That said bonds were issued pursuant to an act of the legislature of the State of Nebraska of date 18' February, 1875, as recited in the said bonds.

Fifth. That on the first day of January, 1875, the indebtedness of said county authorized to be bonded under the said act did not exceed fifteen thousand dollars.

Sixth. The amount of bonds issued and put on the market under the said funding act was near forty-four thousand dollars; but the said bonds, or a portion of them, were exchanged

at eighty-five cents on the dollar for the prior obligations of the county.

Seventh. The county commissioners of the said county met in lawful session on the 30th October, 1875, and then duly passed an order submitting to a vote of the people of said county, a proposition to fund the floating indebtedness of the county, which proposition was to be voted upon at the special election on the 29th November following. And after transacting the proper and ordinary business at said meeting the board adjourned sine die.

That after the said adjournment, and without any sort of authority, and for a wrongful and fraudulent purpose, some person or persons surreptitiously added to the record of the proceedingsof said board the words "to November 16," thus making it appear that the board had adjourned to that day, instead of the sine die adjournment which was in reality had.

And in furtherance of the said fraudulent design two of the commissioners met without the knowledge of the other, on the day last named, and without any sort of lawful authority therefor and then rescinded the action theretofore had in submitting the said proposition to a vote of the people.

Eighth. That the bonds in controversy were directed to be issued at the illegal meeting of the said board so held on the said 16th day of November, 1875, and were afterwards issued pursuant to such orders and a further order made at an adjourned meeting of said board on the 5' January, 1876; but whether the meeting last named was a lawful one does not

appear. The record simply shows the session to have been an adjourned one, but from what time the adjournment was had does not appear.

Ninth. And that the bonds and coupons sued on were executed in Nebraska, but were made payable in the State of New York.

ELMER S. DUNDY, *Judge.*

(See printed record pp. 44 and 45.)

After the finding of the facts the following stipulation was made between the parties, to-wit: "Now come the parties to this suit, and for the purposes of this suit, they agree that the commissioners' warrant records of Sherman county shows the allowance of $15,000 in claims from the organization of the county to the first day of January, 1875, for which warrants or orders were drawn on the treasurer, and no more. Plaintiff reserves the right to object, when the facts here stipulated are offered in evidence for irrelevancy, incompetency, and immateriality. This stipulation takes the place of offering the original record, and is made to save the expense and trouble of having said original record at the trial."

Dated Feb. 8th. 1882.

HARWOOD & AMES,
Plaintiff's Attorneys.

T. M. MARQUETT.

(See printed record p. 46.)

On motion of counsel of defendant in error the court found additional facts as follows:

Additional finding of facts made at the January, 1883, term of court, which is made on motion and at request of the plaintiff.

On further and careful examination of the proof on file I find that the parties stipulated in writing that "the commissioners' record of Sherman county shows the allowance of $15,000 dollars in claims from the organization of the county to the first day of January, 1875, for which warrants or orders were drawn on the treasurer and no more," and that such stipulation ought to stand.

This is intended to take the place of finding No. 5.

It is further found that the county commissioners at one of their meetings estimated the amount of the county indebtedness which might be funded at the sum of $36,874.95, for which it would be necessary to issue bonds to the amount of $43,400, and that bonds were issued pursuant to such estimate, but is not shown what the actual indebtedness was at the time the bonds were issued.

ELMER S. DUNDY, *Judge.*

(See printed record pp. 47 and 48.)

No exceptions were taken to the findings of fact by either party. Both filed motions for judgment on the findings and the case was submitted to the court, May 25th, 1883, and judgment rendered against the county for the sum of $5,671.60 and costs.

ASSIGNMENT OF ERRORS.

The plaintiff in error assigns objections to said judgment as follows:

First. The facts specially found by the court were insufficient to support the judgment rendered.

Second. That the court rendered a judgment in favor of the said defendant in error for the amount claimed by him in his petition and for costs; whereas, the court should have rendered judgment in favor of said plaintiff in error, dismissing the action of the said defendant in error at his costs.

FIRST POINT.

The finding of facts as to the amount of indebtedness of the county up to January 1st, 1875, the time to which the indebtedness could be funded, if at all, shows clearly that it did not exceed $15,000.00.

This amount is determined by stipulation of parties (see printed record, page 46), and the additional finding of facts which says that "the stipulation ought to stand" (see printed record, page 48).

While it is true that the additional findings show that the commissioners, at one of their meetings, no date of which is given, "estimated the amount of the county indebtedness which might be funded, at the sum of $36,874.95, for which it would be necessary to issue bonds to the amount of $43,400.00, and that bonds were issued pursuant to such estimate." Yet

the judge says, "It is not shown what the actual indebtedness was at the time the bonds were issued."

Neither does such estimate show the time to which the indebtedness of the county was estimated, whether up to the first of January, 1875, the time to which it was intended under the act the indebtedness should be funded, or to the first of January, 1876, the time of the issuance of the bonds.

The finding shows that an "*estimate*" only was made, and very properly concludes that an estimate of the amount of the indebtedness of the county was not a determination of the "actual indebtedness," neither could such an estimate take the place of the stipulation of parties that the indebtedness did not exceed $15,000.00, and the learned judge very properly concluded that the stipulation should stand.

The sixth finding of facts shows definitely the amount of bonds issued by said commissioners to be nearly $44,000.00, and this to pay an indebtedness of $15,000.00, as shown by the stipulation of the counsel of defendant in error.

We think the court must conclude that the bonds so issued were in an amount exceeding that provided for by the law, and were negotiated for less than 85 cents on the dollar, and are therefore *ultra vires*, and that no recovery can be had thereon.

SECOND POINT.

The act under which the bonds were issued is a special act conferring corporate power, and therefore contravenes Sec-

tion 1, Article VIII., of the Constitution of Nebraska of 1866–1867, which reads "The Legislature shall pass no special act conferring corporate powers."

General Statutes of Nebraska (1873), page 64.

It will be seen from an examination of the law under which these bonds were issued, that it conferred such power only on certain counties, naming them. It was a special law, in that it did not apply to all of the counties of the State.

The Supreme Court of Nebraska, in passing on a law (enacted at the same session as the law under which the bonds in question were issued) "authorizing School District No. 56 of Richardson County, Nebraska, to issue bonds for the purpose of erecting a school building, procuring a site therefor, and setting aside funds to pay the same," held it to be repugnant to the above section of the constitution then in force.

Cobb, J., delivering the opinion of the court, said: "The points are presented by stipulation. The first and principal one, and the only one which it is deemed necessary to pass upon, is as to the constitutionality of the said act of the legislature under which the said bonds and coupon were issued. Section 1, Article VIII. of the constitution then in force, is as follows: 'The legislature shall pass no special act conferring corporate powers.'

"It cannot be doubted that the act in question is a special act. It relates exclusively to School District No. 56, in Richardson County. None of its provisions apply, or are intended to apply to any other district or subdivision of the State, or the people thereof. It was published only as a special law.

"It is equally clear that the powers intended to be conferred by said act—that of issuing bonds, to be binding upon, and the principal and interest thereof to be paid by the said district—are corporate powers within the meaning of the said section of the constitution.

"It was evidently the intention of the framers of the constitution to put an end to an universally admitted and then growing evil, that of local and special legislation, in all cases where the beneficial results of such legislation could be reached by general laws, and they thereby adopted a policy which it is the duty of this court to uphold.

"The said act of February 2, 1875, being clearly repugnant to the above quoted provision of the constitution, conferred no power on the district to issue bonds. Their issue by it was *ultra vires*, and the coupon sued on is void."

Clegg v. School District No. 56, 8 Neb., 179.

The law thus held void is found in the Laws of Nebraska, 1875, pp. 281–282.

The Supreme Court of Nebraska pronounced a law passed by the legislature, February 14, 1873 (Special Laws of Neb. for 1873, p. 80), "to authorize Falls City precinct to issue bonds to aid in the construction of a court house for Richardson county," to be in conflict with said section of the constitution.

Maxwell, chief justice, speaking for the court, said "the act in question conferred no authority whatever to issue the

bonds in question, and they are absolutely void in whosesoever hands they may be."

Dundy vs. Richardson County, 8 Neb., 518.

In School District vs. Insurance Company, the Supreme Court of the United States followed and approved Clegg vs School District No. 56 (8th Nebraska, 178). Mr. Justice Miller, speaking for the court, said:

"Section 1, Article VIII., of the Constitution of Nebraska of 1866–67, reads thus: 'The legislature shall pass no special act conferring corporate powers.'"

"The Act of Feb. 2, 1875, is entitled 'An Act authorizing School District No. 56, of Richardson county, to issue bonds for the purpose of erecting a school building, procuring a site therefor, and for setting apart a fund to pay the same.'

"It authorized the school board to issue bonds to the amount of $20,000, payable in ten or twenty years, with 10 per cent per annum interest, for that purpose, and required a vote of a majority of the electors of the district before they could be issued. It forbade the sale of these bonds at less than eighty-five cents on the dollar. It also enacted that all the penalties and forfeitures thereafter imposed, for any breach of the ordinances of Falls City, and all money for licenses to sell or traffic in liquors or any other commodity, or license to transact other business, should be paid over to the board of trustees of the School District, as well as all fines imposed by the police judge of said city. The bonds on which the judgment in this case was rendered were issued under this act, and

it was so recited on their face. That this was a special act is not denied. Nor can it be controverted successfully that it confers corporate powers.

* * * * * * *

"The Supreme Court of Nebraska, in Clegg vs. School District (8th Neb., 178), held that the statute under which these bonds were issued was void, because forbidden by this clause of the State Constitution. We are of the opinion that this is a sound construction of the constitution, and that as to the first question certified to us it must be answered that the act of February 2, 1875, under which these bonds were issued, is in conflict with the Constitution of the State, and is therefore void."

School District vs. Insurance Co., 13th Otto 707–709.

The following are leading cases where the principle contended for is ably and forcibly illustrated:

The State ex rel. The City of Columbus vs. Mitchell, 31 Ohio State, 592.

Anderson vs. The City of Trenton, 42 New Jersey Law, 487.

Counsel for defendant in error on the argument of the case below cited *The Commissioners of Jefferson County vs. The People*, 5th Nebraska, 127. The only constitutional question discussed in that case was the power of the legislature to declare certain warrants of the county "valid and binding upon said county."

It was urged by the attorneys for the commissioners that the legislature, in passing the law under consideration in that

case, "exercised judicial power;" that the act was "a usurpation of judicial authority incompatible with the spirit of our government. To adjudicate upon and protect the rights and interests of individuals, to compare the claims of contending parties, and to decide private disputes between them according to the established rules of law, is the peculiar and exclusive province of the judicial department."

The attorneys for The People met this issue squarely and discussed no other constitutional question. An examination of the opinion and of the authorities cited therein by Mr. Justice Maxwell, must necessarily convince this court that no other question was considered as being involved in the case.

That the act conferred corporate power and was in conflict with Section 1, Article VIII, of the Constitution of 1866–1867, was not suggested in argument of counsel, nor was it considered by the court. The case, therefore, should not be regarded as authority on this question of corporate power. If, however, the court should conclude that it has any bearing on the subject, an examination of Clegg vs. School District and Dundy vs. Richardson County, *supra*, later cases, where the question was fully argued and considered, must force the conclusion that the Supreme Court of Nebraska has fairly and squarely overruled The Commissioners of Jefferson County vs. The People, and set itself right on this question of corporate power.

THIRD POINT.

The law under which the bonds in question were issued was, as before stated, approved and took effect February 18, 1875.

In October, 1875, the people of Nebraska adopted a new constitution which became the supreme law of the State on and after November 1 of that year.

The bonds in question were not issued until January 1, 1876. The act, if it ever had any life, was repealed by Section 15, Article III. of the Constitution of 1875, which provides that "The legislature shall not pass local or special laws in any of the following cases—that is to say: * * * * * * In all other cases where a general law can be made applicable, no special law shall be enacted."

Neb. Comp. St. 1881, page 19.

Within the limits of reason can it be doubted that a general law for funding the indebtedness of the several counties of the State could have been made applicable. It would seem useless to waste words about a proposition so clear as this.

Then, what was the effect of the adoption of the new constitution on a law in existence in direct conflict with its provisions? Necessarily, a repeal of the law, as to all persons having acquired no rights thereunder. In what more solemn way could the people repeal a law than by constitutional enactment? No bonds had been issued, no rights had been acquired under the law before the adoption of the new constitution, consequently the repeal violated no obligation.

Prior to the adoption of the Constitution of 1875, the Legislature of Nebraska passed the following law: "An Act to allow justices to hold their courts within the limits of cities and towns in certain cases:"

"Sec. 1. In all cities and towns having within their corporate limits two or more precincts or any portion thereof, it shall be lawful for any justice of the peace to hold his court in any part of said cities or towns without regard to the precinct in which he resides." (Laws of Nebraska, 1875, page 58.)

The Supreme Court of the State, in passing on the constitutionality of this law, say: "This act is special legislation; it applies to only a few of a certain class of officers. Is such special legislation repugnant to the constitution? Section 19, Article VI. of the constitution, provides that "all laws relating to courts shall be *general and of uniform operation*," and by Section 15, Article III., the legislature is inhibited from passing local or special laws, in a number of cases enumerated, among which is that of regulating the jurisdiction and *duties* of justices of the peace, police magistrates, and constables. It is the duty of a justice of the peace to have a place in which to exercise the functions of his office, known to the public.

Now, the act of February 25 is special legislation in regard to the *duty* of justices of the peace, in applying only to those in cities and towns, and again, it is not *general* and *uniform* in its operation, and therefore is clearly inconsistent with both these provisions of the constitution; *and, hence, upon the adop-*

tion of the constitution, this special act ceased to have any force or effect."

State of Nebraska, Ex Rel., A. N. Ferguson vs. Joel Shropshire, 4 Neb., 412–413.

In Hanscom v. The City of Omaha, 11 Nebraska, 45–46, Chief Justice Maxwell, delivering the opinion of the court, said: "In the case of *The State vs. Weston*, 4 Neb., 216, it is said that the constitution is the supreme law of the State emanating directly from the body of the people. If such is the case, if the constitution is the supreme law of the State, then whatever cannot now be authorized by the legislature cannot continue in force by virtue of legislation under our former constitution, and in force at the time the present constitution took effect. Such legislation, being in conflict with the supreme law, must yield to it. And this is the rule laid down by this court.

B. & M. R. R. vs. Lancaster County, 4th Neb., 305.
State vs. Lancaster County, Ibid 537.
Dundy vs. Richardson County, 8 Neb., 508.
B. & M. R. R. vs. York County, 7 Neb., 486.
B. & M. R. R. vs. Saunders County, 9 Neb., 507.

"All laws in force at the time of the adoption of our present constitution in conflict with its provisions, and under which rights had not become vested, were thereby repealed so far as they were inconsistent."

IN CONCLUSION.

1. The funding law was unconstitutional, being in direct conflict with the constitution of 1866-67.

2. If the court should think it was authorized by the constitution of 1866-67, it was repealed by the adoption of the constitution of 1875.

3. The bonds not having been issued until after the adoption of the new constitution, were issued without authority, and are absolutely void.

4. If they were given for valid claims against the county, the holders can bring their proper action, and recover what it justly owes them. But it would be a great wrong to compel the people of that county to pay a sum now amounting to $79,200.00 to liquidate an indebtedness which the defendant in error by stipulation admits did not exceed $15,000 up to January 1, 1875.

TURNER M. MARQUETT,
LEWIS A. GROFF,
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Counsel for Plaintiff in Error.

104-735

OFFICE SUPREME COURT U. S.
FILED
DEC 5 1883
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States.

No. 975.

THE COUNTY OF SHERMAN, IN THE STATE OF NEBRASKA,
Plaintiff in Error.

vs.

HENRY W. SIMONDS, Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

NATHAN S. HARWOOD,
JOHN H. AMES,
Counsel for Defendant in Error.

STATE JOURNAL CO., BLANK BOOK MAKERS, STATIONERS AND PRINTERS, LINCOLN, NEB.

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This was an action brought on certain bonds and coupons issued by Sherman County, Nebraska, under and pursuant to an act of the legislature of Nebraska, authorizing the commissioners of the counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman to issue bonds for the purpose of funding the warrants and orders of said counties, approved February 18th, 1875. The following sections of said act are sufficient to quote for the purposes of this case:

SECTION 1. That the board of county commissioners of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman counties are hereby requested to cause to be prepared in proper manner and issued in due form and style coupon bonds, as hereinafter set forth.

SEC. 2. Such bonds shall be issued for the payment by the said counties of Colfax, Platte, Boone, Antelope, Howard, Greeley, and Sherman to the holders thereof, of the sum specified in each bond respectively. Said bonds to run not less than five nor more than ten years from the date thereof, and shall express that they are issued in pursuance of this act. They shall be of such denominations as the said board of commissioners shall deem proper, but none of them shall be of a less denomination than one hundred dollars; they shall bear interest at the rate of ten per cent per annum, payable annually on the first day of January each year. The bonds shall be signed by each member of said board of commissioners, sealed with the county seal and countersigned by the clerk of said county. Said seal shall be affixed to said bonds when delivered, and not before. The coupons shall be attached to said bonds for the payment of said installments of interest above provided for, and said coupons shall be signed in like manner with the bonds, and they shall be receivable in payment of county taxes. Said bonds shall be made payable at such bank or other place as said board of commissioners may deem best for the interest of the people of said counties, and the proceeds arising therefrom shall be held and used for the purpose, and no other, of paying off and redeeming all *warrants* or *orders* and *other* evidences of indebtedness drawn

upon the treasurer of said county, which are now outstanding or which may be so outstanding prior to the first day of January, 1875. Provided, that no more of the bonds authorized to be issued by virtue of this act shall be issued than is necessary to pay off and redeem such warrants so outstanding; and provided further, that the said commissioners shall not issue of said bonds to exceed in value the amount of said indebtedness up to January, 1875, nor shall bonds be negotiated at a less price than eighty-five cents on the dollar.

SEC. 3. Makes it the duty of the board of commisssioners to to levy an annual tax to pay interest and finally to pay principal.

SECS. 4 and 5. Provides when and how the warrants and orders shall be redeemed.

These bonds were issued and came into the hands of the plaintiff, who was an innocent purchaser, for value before maturity, without any other notice than such as appears upon the face of said bonds.

It is contended on behalf of the plaintiff in error that the bonds are void because (1) there was an over issue, (2) because the act under which they were issued is a special act conferring corporate powers, and (3) because the act was abrogated by the new constitution, 1875, adopted after the act in question was passed, but in force at the time of the actual issue of the bonds. We will discuss the first and third points made in plaintiff's brief first, leaving the second proposition, which we think is the only one in the case, to the last.

FIRST POINT.

What is there in this record evidencing an over issue of bonds? This and nothing more: A strained and an unreasonable construction given to a stipulation made between counsel in reference to a certain book, page 45 of the record. It was stipulated for the purposes of this suit that the commissioners' *warrant record* shows the allowance of $15,000 in claims from the organization of the county to the first day of January, 1875, for which warrants or orders were drawn on treasurer and no more, and this stipulation takes the place of offering the original record, and to save expense and trouble of having said original record at the trial. It is evident that this stipulation was made for but its one purpose, viz., "to save expense and trouble of having the original commissioners' record at the trial." There is no admission that this was all the indebtedness proper to be funded. The stipulation says nothing about $11,000 of warrants found by the commissioners to have been issued and not registered. It says nothing of $5,000 interest on these warrants.

It says nothing of the $5,000 past due coupons, all of which were proper subjects to be founded under the acts in question. It is true Judge Dundy wrote a finding (No. 5) to the effect claimed by the plaintiff, but on his attention being called to it by motion, (See Record, page 47), this finding was corrected by his amended finding, by showing that the *commissioners'* warrant record showed the allowance of so many accounts and no more. And the court further found that the commissioners, at one of their meetings (and the original record shows that it was the reg-

ular meeting first Tuesday of January, 1876), estimated the amount of the indebtedness of said county, which might be funded at the sum of $36,874.95, for which it would be necessary to issue bonds to the amount of $43,400, and that bonds were issued pursuant to such estimated amount, but it is not shown nor stipulated what was the actual indebtedness at the time the bonds were issued. Indeed the court specially finds "that it is not shown what the actual indebtedness was at the time the bonds were issued." That this meeting was a regular and not an adjourned one is established by the fact that the statute in force at that time—section 11, page 234 of Gen'l Statutes, 1873, provides: "The County Commissioners shall meet and hold sessions for the transaction of county business at the court house in their respective counties, or at the usual place of holding sessions of the District Court, on the first Tuesday in January, April, July, and October in each year." Of course there could have been no special meeting or adjourned previous meeting on that day. Authorities are numerous on this point, but we do not suppose it necessary to cite them.

(Amended findings, page 48 printed record.)

How then can it be presumed or asserted that there was an over issue? Certainly not from the facts. The stipulation of counsel as to what was contained in a certain book cannot be tortured into any such meaning.

It occurs to us that this finding, the second of the amended findings (page 48 of the record, must settle the question of the over issue. There is no pretense that there was any fraud. The mat-

was within the exclusive jurisdiction of the Board of County Commissioners; they acted judicially, and their finding is conclusive unless appealed from.

Brewer v. Otoe County, 1 Neb., 382.
Brow v. Otoe County, 6 Neb., 114.
State, ex rel. Clark, v. Buffalo County, 6 Neb., 462.

In Brown v. Otoe County, *supra*, Lake, Ch. J., speaking of the powers of the County Commissioners, says: "Under this head it is contended that Brown, having failed to appeal from the decision of the board of county commissioners upon his claim, that decision was final and conclusive of the rights of all concerned. I have examined all the authorities cited by counsel both for and against this proposition, and am led to the conclusion, against preconceived impressions, that the point is well taken. It is conceded on all hands that this account was one proper to be submitted to the board of county commissioners for their action. It was a demand under the law, which the board was required to pass upon and determine * * By the light of these decisions (referring to a number of authorities) it seems very clear that under a statute like ours, which confers upon county commissioners full and exclusive original authority 'to examine and settle all accounts of the receipts and expenditures of the county, and allow accounts chargeable against the county,' their decision whether in favor or against the allowance of claims, but for the right of appeal, which is given, would be conclusive both upon the county and claimant." Some verbal criticism is made in the plaintiff's brief to the effect that this was only an *estimate* made by the com-

missioners. But this word throughout the Nebraska statute is used in the sense of a finding.

The commissioners are required at the regular meeting in January of each year to make an estimate of the necessary expenses of the county during the ensuing year, the total of which shall not exceed the amount of taxes authorized by law to be levied. "Such *estimate* containing the items to be levied shall be entered at large on their journals and published for four weeks—and no levy of taxes shall be made for any other purpose or amounts than are specified in such *estimate*. If any levy is made in excess of such *estimate* the members of the county board and their securities shall be liable for the full amount of such excess."

General Statutes of Neb. (1881), Sec. 6, page 179.

The commissioners therefore made a finding of the amount of indebtedness proper to be funded under the act in question, and, as stated in the last finding of the court, issued the bonds in suit in pursuance of such finding. These bonds recited on their face that they were issued pursuant to said act, and if the act of the Legisture is within the purview of the constituion the validity of the bonds connot now be questioned in the hands of a bona fide holder for value before maturity, which defendant in error is conceded to be. This point is so thoroughly settled in this court that the citation of *authorities* is unnecessary.

SECOND.

The plaintiff claims that this law is repugnant to the new constitution (November, 1875) adopted after the law was passed, but

before the bonds were issued thereunder. Sec. 15 Art. III. of the new constitution prohibits the legislature from "granting to any corporation, association, or individual any special privileges, exclusive privileges, immunity or purchase," and "in all other cases, where a general law can be made applicable, no special law shall be enacted." It is contended, that because this is a special act it is in conflict with the last clause of the section above quoted, and therefore abrogated.

It will be observed, however, that this prohibition goes entirely to the *manner* of proceeding by the legislature and not to the substance. It does not render void previous acts properly passed under the old constitution, but hereafter prohibits the legislature from legistating specially whenever a general act is applicable. And who is to determine whether general act is applicable on not? Shall it be the courts or the legislature? Manifestly it is a question that must be left to the discretion of the legislative body.

The construction claimed by the plaintiff would nullify more than half the laws on the statute. The new constitution has a provision, not in the old constitution, that every bill and concurrent resolution shall be read at large on three separate days in each house, and the bill and all its amendments shall be printed before vote is taken on its final passage, etc. Of course this provision relates, just as the other article referred to, to future enactments, or, as before stated, to the manner of legislating.

The case referred to in the brief of the counsel for plaintiff in error, *State, ex rel. Ferguson, v. Shropshire*, 4 Neb., 412, was decided upon the point, that the law relating to the District, Pro-

bate and Justice courts was not "general and uniform in its operation"—an enactment which was in violation of both constitutions; and so far as it states that the special enactment was repealed by the adoption of the new constitution it is mere *obiter* and not sustained by reason or authority. This kind of legislation, as we shall hereafter show more at length, is upheld in the more recent case of *State, ex rel. Griggs, v. Jefferson County*, 5 Neb., 127.

THIRD.

It is claimed that this act contravenes the provision of the constitution prohibiting the conferring of corporal powers by special enactment.

Dundy v. Richardson Co., 8 Neb., 508.
Clegg v. School District, 8 Neb., 178.
School District v. Insurance Co., 103 U. S., 707,

are relied on to sustain this position. These cases, it will be be observed, differ from the one at bar in this important particular: that in those cases the obnoxious enactments did assume to confer special powers of an essentially corporate nature, to-wit: The creation of debts for local and special purposes, the converting of large and important revenues to a particular locality. But in the case at bar no such attempt is made. Here it appears that a subdivision of the state or the special agency, as it is called by our courts, in the appropriate exercises of its pre-existing functions of local administration, had already created an indebtedness, which the legislature, the supreme gov-

erning and taxing power of the state, determined should be paid. And because it had been incurred for purposes of local expenditure, further determined, or rather had pre-determined, that the burden of its payment should be borne by the property within the territorial limits of the agency by which it had been incurred. To provide for the payment of this indebtedness, two measures were available, the adoption of either of which was optional with the legislature. They might either have pledged the credit of the entire state or levied a tax on the grand assessment roll for its payment, or have pledged the credit or imposed a tax for that purpose on the property within the county. But in either case there would have been nothing analogous to the conferring of corporate powers upon, or even the recognition of the corporate character of, the county. In either case there would have been exercised nothing but the sovereign powers of the legislature itself, viz., A provision for the payment of a public indebtedness, in compliance with which the county authorities acted only in their usual capacity of local agents. We conceive that it determines nothing as to the character of the agency as being corporate, or exercising corporate powers, or otherwise, or whether the legislature calls one or a few of them into action, or whether all such agencies in the state are put in requisition.

This we understand to be the philosophy of the opinion in *The Commissioners of Jefferson County v. The People, ex rel. N. K. Griggs*, 5 Neb. 127. In that case the commissioners of Jefferson county had entered into a contract with certain parties to build a court house. In part payment thereof they issued warrants to

the contractors on the court house fund. There was no such fund allowed by law, and of course, the warrants were illegal. After ascertaining this fact the commissioners struck the levy from the assessment rolls, and ordered the treasurer to return all moneys collected to the parties who had paid the tax. Prior thereto, the warrants had been assigned to one Griggs. In 1875 the legislature passed a special act [Session Laws of 1875, page 278], requiring the commissioners to issue funding bonds sufficient to take up and pay off the said illegal warrants. The commissioners refused to issue such bonds, and a mandamus was issued to compel them to comply with the terms of said act. The constitutionality of the act was the sole essential question before the court, and it was distinctly held not to be obnoxious to the constitutional provision now invoked. It is claimed by counsel for plainiff in error that the question of corporate powers was not raised or considered in that case. Whether that is so or not does not appear, but the constitutionality of the act was passed on. From the line of reasoning pursued by the court, and the authorities cited, we do not see how the question of *corporate* powers could arise. In that case, as in this, the legislature exercised its usual powers through one of its customary channels, and in neither case is there any assumption or implication that the county is a municipal corporation, or is to exercise any corporate power or function.

The discussion of the supreme court proceeded upon the theory that the legislature had the power to pay, or cause to be paid, the indebtedness of one of the state subdivisions. The authority of the legislature to compel the payment of debts incurred by muni-

cipal corporations and by government subdivisions is variously treated as the enforcement of a just, even though sometimes not legal, obligation of the former, and as compelling the exercise of the pre-determined functions of the latter. But we know of no authority for holding that the use of such compulsion is, in any sense, the conferring of corporate powers. The debt was not incurred or increased, but simply paid by the issue of its negotiable bonds. Where a county is justly indebted, "there is no doubt of the power of the legislature to require the county to pay said indebtedness," or require the county to issue its negotiable bonds for the amount of its indebtedness.

Commissioners v. The People, 5 Neb., 127.
Cooley on Taxation, 476 to 485.
Sinton v. Ashbury, 41 Cal., 525, and cases cited.
People v. Almeda County, 26 Cal., 641.
Town of Guilford v. Board of Supervisors, 13 N. Y., 143.
Dundon v. Green, 57 Ill., 63.

In *R. R. Company v. Otoe County*, in 16 Wall., 667, this court held the act of the legislature, passed Feb. 15, 1869 (special act similar to this), was not in conflict with the provisions of the Nebraska constitution.

The case of the commissioners above cited, it seems to us, is conclusive of the points involved in this suit, whether considered under the second or third point raised in plaintiff's brief. The writ was enforced against Jefferson county after the adoption of the new constitution of 1875, and as the constitutionality of the

act was fairly involved, it must be considered as settling every constitutional question capable of being raised against that kind of enactment. This case, too, has been cited with approval and followed in the recent case in this court of *Reed v. Plattsmouth*, (March 5th, 1883), reported Supreme Court Reporter, vol. 2, page 208.

FOURTH.

It is thought that we might with all confidence rest this case on the above citations without further comment or authority. Yet even at the risk, as was suggested by his Honor Justice Miller in the argument of this case below, of spoiling the force of a good argument, we cannot forego the temptation of giving another reason why the constitutional provision invoked here does not apply, for the reason that the provision does not relate to counties. *First*, Because while the act is local in its operation, it is not therefore private or special. *Second*, Because counties are not in the true sense of the word corporations, but mere governing agencies or subdivisions of the state.

The entire scope of Article VIII. of the constitution must be taken into view in order to arrive at its proper construction and application. It is as follows:

ART. VII.—CORPORATIONS.

SEC. 1. The Legislature shall pass no special act conferring corporate powers.

SEC. 2. Corporations may be formed under general laws.

SEC. 3. The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

SEC. 4. The legislature shall provide for the organization of cities and incorporated villages by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credits so as to prevent the abuse of such power.

In arriving at the correct construction of the clause in question, reference should be had to the contemporaneous circumstances, the mischiefs to be remedied, and the accepted meaning of the word "corporations" in existing legislation.

It should also be so construed as to give consistent effect to the entire article, if possible.

An examination of previous territorial legislation will fail to show a single instance in which the subject of counties, in any form, is treated under the head of corporations.

All subsequent legislation has proceeded upon the same theory. If the construction claimed was correct, no county could have been organized since the adoption of that constitution, or granted any power except by general law.

All the following legislation, subsequent to the constitution, proceeds upon the theory that the Article in question does not apply to counties, and is in the same line as previous legislation.

ACTS OF THE LEGISLATURE OF NEBRASKA, DEFINING THE BOUNDARIES OF COUNTIES, ETC.

The act of March 3d, 1873, defines the boundaries of fifty-five counties, and all prior acts inconsistent with this act were repealed.

Gen'l Statutes, 212.

Comp. Statutes, 161.

A special act to establish and define the boundaries of Colfax county. App. Feb. 15, 1869.

Laws of 1868, 245.

Also to define the western boundary of Lincoln county.

Id., 245.

Also to incorporate the city of Arago.

Id., 255.

Also to establish boundary lines between Dodge and Burt.

Id., 265.

Also to define the limits of Bellevue.

Id., 269.

Also special law declaring section lines public roads in Platte, Colfax, and Madison counties.

Laws of 1870, I—1, 153.

Same with reference to other counties.

Id., 154–156.

Also to incorporate the city of Florence.

Id., 187.

To define the limits of Crete.

Id., 189.

Same to Fremont.

Id., 191.

To incorporate Fremont.

Id., 192.

To organize Harlan county.

Id., 192.

To define the boundaries of Dawson county.

Id., 193.

To make Cheyenne county a separate county for judicial purposes.

Id., 194.

And to attach Buffalo and Dawson to Hall county for judicial purposes.

To provide for the speedy organization of Howard and Boone counties.

Id., 195.

To define the boundary between Platte and Butler.

Id., 166.

For the speedy organization of Franklin county.

Id., 198.

Also, "to define the boundaries of certain counties."

Id., 199.

To provide for the division of Jefferson county.

Id., 200.

To define the boundaries of Lincoln county.

Id., 202.

To define the boundaries of and to organize Phelps county. Took effect Feb. 11th, 1873.*

Gen. Statutes, 223.

An act passed Feb. 12, 1873, granting and enumerating the powers of counties, among other things provides:

IV. "To exercise such other powers as may be especially conferred by law.

Gen. Statutes, 232.

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*This act was to define the boundaries of Phelps county, appointing Edward Barnes, C. J. Dilworth, and J. Q. Mustgrove county commissioners for said county. The organization of a new county much more than the act in question creates corporate powers. It carves out the territory, authorizes the levy of taxes, and the creation of debts. Yet it is utterly impossible to make such an act applicable to the whole state. This may be done in case of cities and towns, but cannot apply in this new country to counties. The territory must first be carved out, and then machinery of government set in motion. As before stated, if the inhibition invoked in this case is strictly applied, there could be no new counties organized.

At the adoption of the constitution there was nothing in our laws making a county a corporation.

Statutes 1867, p. 38.

The third clause amounts to a demonstration that the Article was not intended to include counties or political bodies. If so, the property of the state, counties, cities, etc., etc., would all be subject to taxation. This is wholly inconsistent with the history of legislation, the policy of this state and all states.

Public property is seldom subject to taxation the same as an individual's.

This clause of the constitution having been adopted from the state of Ohio, applying the rule that the construction by the courts of Ohio is also adopted, it has been claimed that this question has been settled against us.

The inhibition has been held by the courts of Ohio to apply to a city.

State v. Cincinnati, 20 Ohio St., 18.

It has also been held to apply to a school district by this court.

Clegg v. School District, 8 Neb., 178.

And by the Supreme Court of the United States it has been given a like application.

School District v. Insurance Company, 103 U. S. St., 707.

All these cases have cited and followed *State v. Cincinnati*, 20 Ohio St., 18.

But no case has been decided applying the principle to a county, and the Ohio cases expressly decline to do so.

Brinkeroff, J., (*State v. Cincinnati*) after holding the clause applicable to the city of Cincinnati, says; "And here I might properly stop; yet for the purpose of excluding a possible conclusion, I will, on my own individual responsibility, say one word more. It may be asked, Do we not intend to include township and county organizations in the category with municipal organizations proper? The question is not involved in the present case, and so is not properly before us; but if it were, I apprehend the answer to it would readily be found in the case of the "*Commissioners of Hamilton v. Mighels*, 9 Ohio St., 190, where it is held that a county is not properly a corporation, but that it is at most but a local organization, which for the purpose of civil administration is invested with but a few functions characteristic of a corporate existence."

Commissioners of Hamilton Co. v. Mighels, 7 Ohio St., 118.

Our supreme court has followed these cases and held that under our laws a county is not a corporation.

Wood v. Colfax County, 10 Neb., 555.

Under these rulings it seems difficult to understand how the inhibition of the constitution can be applied to a county.

The provisions in the Kansas Constitution are like the foregoing, and have received a similar construction. In 22 Kansas, at page 561, the court, in discussing the character of such corporations as townships and counties, says: "The theory of these

various decisions is in effect, that such organizations, though corporations, exist as such only for the purpose of general political government of the state; that all the powers with which they are intrusted are the powers of the state, and all the duties with which they are charged are duties of the state; that in the performance of governmental duties, the sovereign power is not amenable to individuals, and therefore these organizations are not liable at the common law for such neglect, and can only be made liable by statute, (Cooley on Torts, 622; Dillon on Mun. Corp., Vol. 2, 761 and 763; *Town of Waltham v. Kemper*, 55 Ill., 346; *Comm'rs of Hamilton Co. v. Mighels*, 7 Ohio St., 109." See also:

Comm'rs of Marion County v. Riggs, 24 Kansas, 257.
Com. Nat. Bank v. Iola, 2 Dill., 353.

Dillon, in his late and elaborate treatise on Municipal Corporations, after noticing the distinction, draws attention to one fact which will help to make it clear: "The primary and fundamental idea," he says, "of a municipal corporation is an agency to regulate and administer the internal concerns of a locality in matters peculiar to the place incorporated, and not common to the state or people at large.

But it is the common practice of the state to make use of the incorporated instrumentality, or of its officers, to exercise powers, perform duties, and execute functions not strictly or properly local or municipal in their nature, but which are in fact state powers exercised by local officers within defined limits. In theory, the two classes of powers are distinct, but the line which separates the one from the other is

often very difficult to trace. The point may be illustrated from the English law: If the King incorporate a town its officers will have no implied power as conservators or justices of the peace; express words are necessary to confer this power, and when they act in the capacity, it is not because they are corporate officers, but because of powers expressly annexed to their corporate office; and the two capacities remain distinct, although united in the same person.

See also sustaining these views:

Russell v. Men of Devon, 2 Dumford and East, 667.
Ward v. County of Hartford, 12 Conn., 404.
Comm's of Galliay County, v. Halcomb, 7 Ohio St., 232.
Wilson v. School District, 32 N. H., 126.
Eastman v. Meredith, 36 N. H., 284.
Hedges v. County of Madison, 1 Gilman, 567.
Mower v. Inhabitants of Leicester, 9 Mass., 247.
Freeholders of Sussex v. Stader, 3 Harrisson (N. J.), 108.
Morey v. Town of Newfane, 8 Barb., 645.
Soper v. Henry County, 26 Iowa, 264.

The mere fact that these organizations are declared in the statute to be bodies corporate, has little weight. We look behind the name to the thing named. Its character, its relations, and its functions determine its position, and not the mere title under which it passes.

In the last five cases cited the organizations were declared in the statute creating them to be bodies corporate, yet this made no difference in the rule.

In *Riddle v. The Proprietors* etc., 7 Mass., 169, Ch. J. Parsons, says:

"We distinguish between proper aggregate corporations and the inhabitants of any district who are by statute invested with particular powers without their consent. These are in the books sometimes called *quasi* corporations. Of this description are counties and hundreds in England, and counties, towns, etc., in this state.

Again, this act of the Legislature is not a *special act* within the terms of the constitutional provision. We quote the following from a late case in the Supreme Court of the United States, in the case of *Town of Unity v. Barrager*, 13 Otoe, page 447.

An act of the Legislature of Illinois, which legalizes and makes valid elections held by the people of Macon county, Illinois, on the question of issuing negotiable bonds of the county in aid of certain railroad companies therein named, and authorizes all the townships in the counties when township organization had been adopted, lying on or near the line of the Indiana & Illinois Central Railway Company, on certain conditions thereof.

Held to be, even independent of a provision declaring it so, a public act of which the courts are bound to take judicial notice, and that it need not be specially pleaded.

This statute not only affects the people of the county of Macon, and many of the townships of all the counties lying on or near the line of the railroad designated, but also all persons to whose

hands the bonds issued by the county and townships mentioned may come.

Here in case at bar were half a dozen counties authorized to fund their indebtedness by one act. Suppose there were no other counties in the state that had any debt to fund, would it still be necessary to name the whole state? It seems to us not.

FIFTH.

But if the court be of the opinion that the above point is not well taken—that counties, like towns and cities, have municipal powers—then the act in question is not void, for the reason that it grants no greater power than the municipality already possesses.

In the *City of Galena v. Corwith*, 48 Ill., 424, Judge BREESE lays down the doctrine unqualifiedly that every corporation has the undeniable and inherent right to pay its debts or provide for their payment—to fund them, if that be the best policy, and issue the necessary evidences thereof.

It will not be denied that municipal corporations have the power to contract debts, and without limit unless restricted by their charters. Having this power, it follows that they can provide for their payment in such a mode as they and the holders of their indebtedness may agree upon.

"A city being in debt, as evidenced by scrip or notes, may surely change the form of the indebtedness to interest bearing bonds, and this without express authority in its charter. We

don't think it necessary to cite authority to establish a proposition so plain."

48 Ill., 425.
4 Hill, 264.
Brady v. City of Brooklyn, 1 Barb., 585.
Beers v. Phœnix, 14 Barb., 358.
Halstead v. City N. Y., 5 Barb., 218.

In Conclusion.

We are therefore of opinion that the judgment of the circuit court should be affirmed. *First.* Because it is not shown that there was an over issue of bonds or that the commissioners in any way exceeded their authority; in fact, the contrary rather appears.

Second. Because the act in question is valid and constitutional, whether considered under either objection raised against it.

Third. Because the act, while local in its operations, is in fact a general act.

Fourth. Because the act does not apply to counties.

Fifth. Because the debt, not having been incurred or increased, under the act in question, the commissioners had the general authority to change its form to issue in lieu thereof negotiable bonds.

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